

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS LIABILITY)
LITIGATION)

MDL No.: 2419
Dkt. No.: 1:13-md-2419

_____)
THIS DOCUMENT RELATES TO:)

Judge Rya W. Zobel

All cases concerning Specialty Surgery Center,)
Kenneth R. Lister, M.D., and Kenneth Lister,)
M.D., P.C.)
_____)

**PLAINTIFFS' STEERING COMMITTEE'S RESPONSE TO SSC DEFENDANTS'
STATEMENT OF UNDISPUTED MATERIAL FACTS**

The Plaintiffs hereby submit this Response to the Statement of Undisputed Facts (Dkt. No. 2884) filed by Defendants, Specialty Surgery Center, PLLC ("SSC"), Kenneth R. Lister, M.D. ("Dr. Lister), and Kenneth Lister, M.D., P.C. ("Dr. Lister's Practice") (collectively "SSC Defendants"), in Support of their Motion for Summary Judgment on the Plaintiffs' Claims for Strict Liability.

1. SSC was an ambulatory surgery center in Crossville, Tennessee, which was accredited by the Accreditation Association for Ambulatory Health Care, Inc. ("AAAHHC"). 2nd Am. Master Compl., ¶ 22-23 [Docket No. 1719]; Deposition of Jean Atkinson, P. 211, L. 1-9.

RESPONSE: Admitted for purposes of summary judgment only.

2. Dr. Lister owned part of SSC. (Deposition of Kenneth R. Lister, M.D., P. 44, L. 8-10).

RESPONSE: Admitted for purposes of summary judgment that, in 2012 and 2013, Dr. Lister held an ownership interest in SSC between 5% and 8%. (Deposition of Kenneth R. Lister, M.D., at 44:7-23.

3. Dr. Lister is a board certified licensed anesthesiologist. (Deposition of Kenneth R. Lister, M.D., Exhibit 76).

RESPONSE: Admitted for purposes of summary judgment.

4. Dr. Lister's Practice was a professional corporation. When Dr. Lister was paid by Medicare, the payments he received went through that professional corporation. (Deposition of Kenneth R. Lister, M.D., P. 13, L. 21-25; P. 14, L. 1-17).

RESPONSE: This statement is immaterial for purposes of ruling on the motion for summary judgment, and it is vague and ambiguous. The PSC admits for purposes of summary judgment that Dr. Lister operated a professional corporation and that certain Medicare payments went to that corporation in the first instance..

5. The Plaintiffs sought care and medical treatment from SSC and Dr. Lister. 2nd Am. Master Compl., ¶ 151 [Docket No. 1719].

RESPONSE: Denied that plaintiffs only sought care and medical treatment for SSC and Dr. Lister. Admitted for purposes of summary judgment that the plaintiffs went to SSC to receive an injection of medicine to relieve pain, and that the plaintiffs in fact received injections of medicine at SSC from an anesthesiologist, Dr. Lister, who administered MPA compounded by NECC for that purpose.

6. As part of that medical treatment, Dr. Lister administered methylprednisolone acetate ("MPA") procured by SSC from the New England

Compounding Center ("NECC") into the epidural space of the Plaintiffs. See 2nd Am. Master Compl., ¶ 23, 153-154 [Docket No. 1719].

RESPONSE: Denied as stated. Admitted that, in connection with sale of medicine to patients by SSC and Dr. Lister, Plaintiffs received injections from Dr. Lister and that the injections were MPA that SSC had purchased from NECC.

Date: July 20, 2016

Respectfully submitted:

/s/ **Benjamin A. Gastel**

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CERTIFICATE OF SERVICE

I, Benjamin A. Gastel, hereby certify that I caused a copy of the foregoing document to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Date: July 20, 2016

/s/ *Benjamin A. Gastel*

Benjamin A. Gastel